

1 HONORABLE RICHARD A. JONES  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 T-MOBILE USA, INC.,

10 Plaintiff,

CASE NO. C14-1351RAJ

11 v.

ORDER

12 HUAWEI DEVICE USA, INC., et al.,

13 Defendants.

14  
**I. INTRODUCTION**

15 This matter comes before the court on a motion to dismiss from Defendant  
16 Huawei Device USA, Inc. (“Huawei USA”) and a motion to dismiss from its Chinese  
17 parent company, Defendant Huawei Technologies Co., Ltd. (“Huawei China”). Although  
18 the parties have requested oral argument, the court finds oral argument unnecessary in  
19 light of the six extensive briefs before it. For the reasons stated herein, the court  
20 GRANTS both motions to dismiss in part and DENIES them in part. Dkt. ## 32, 54.

21  
**II. BACKGROUND**

22 The court describes the facts as Plaintiff T-Mobile USA, Inc. (“T-Mobile”) alleges  
23 them in its complaint, suggesting no opinion on whether its allegations will prove true.  
24 The court cites the numbered paragraphs of the complaint using bare “¶” symbols

1       T-Mobile, a national mobile phone network provider, contends that Huawei,<sup>1</sup> one  
 2 of many entities that supplies it with mobile phone handsets, has stolen robot technology  
 3 that T-Mobile uses to test handsets.

4       T-Mobile maintains a handset testing facility at its offices in Bellevue,  
 5 Washington offices. ¶ 34. That facility houses “Tappy,” a robot that T-Mobile designed  
 6 to test mobile phone handsets. According to T-Mobile, it began developing Tappy in  
 7 2006 and placed Tappy in service in 2007. ¶¶ 8-10. Patents protect some aspects of  
 8 Tappy’s technology; other aspects are T-Mobile’s closely-guarded trade secrets. ¶ 10.

9       T-Mobile first granted Huawei access to the “clean room” that contains Tappy in  
 10 2012, so that Huawei could assist with testing its own handsets. ¶¶ 15, 42. Huawei USA  
 11 (or its corporate predecessor) has been a T-Mobile handset supplier since it signed a  
 12 supplier agreement in June 2010. ¶¶ 24, 35, 36. Before granting Huawei USA access to  
 13 the clean room, T-Mobile required it to sign both a July 2012 testing non-disclosure  
 14 agreement and, shortly thereafter, a separate “Clean Room Letter” with additional  
 15 security provisions. ¶¶ 37-39. T-Mobile contends that the July 2012 non-disclosure  
 16 agreement binds Huawei China as well. ¶ 38. In addition to contractual confidentiality  
 17 provisions, T-Mobile limited Huawei’s access to the clean room. It limited the number of  
 18 Huawei employees who could enter the clean room and required all of those employees  
 19 to obtain security clearances. ¶ 14.

20       Despite these confidentiality agreements and security measures, Huawei stole  
 21 confidential information about Tappy so that it could develop a competing testing robot.  
 22 It could not have doubted that T-Mobile considered that information confidential,  
 23 because T-Mobile frequently refused to answer Huawei’s detailed questions about  
 24 Tappy’s specifications. ¶¶ 43-44. Those questions often focused on a conductive tip at

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 26       <sup>1</sup> The court uses the collective term “Huawei” either when referring to both Huawei China and  
 27 Huawei USA, or when T-Mobile’s complaint gives the court no basis to determine which  
 28 Huawei entity is responsible for a particular act.

1 the end of Tappy’s “end effector,” which is a metal plate that attaches to the bottom of  
2 Tappy’s arm. ¶ 43.

3 In May 2013, Huawei China employee Yu Wang arrived in Bellevue from China  
4 on a mission to acquire confidential information about Tappy. ¶¶ 45, 101. He came to T-  
5 Mobile’s testing facilities with two other Huawei employees, lead engineer Xinfu Xiong  
6 and Helen Lijingru. ¶ 46. Although Mr. Xiong and Ms. Lijingru had permission to be in  
7 the clean room, Mr. Wang did not. T-Mobile told them to remove Mr. Wang from the  
8 clean room. ¶ 46. Mr. Xiong and Ms. Lijingru nonetheless brought him back the  
9 following day, and secretly escorted him into the clean room. ¶ 48. Mr. Wang used his  
10 own phone to take at least 7 photos of Tappy. ¶ 48. T-Mobile discovered Mr. Wang’s  
11 presence and forced him to leave the facility. ¶ 49. Mr. Wang nonetheless forwarded the  
12 photographs to the Huawei China research and development team. ¶ 50, *see also* ¶ 17  
13 (alleging that Huawei’s research and development team was part of Huawei China).  
14 Huawei later surrendered 4 of the photos to T-Mobile, claiming that the remainder were  
15 too blurry to be of use. ¶ 52. Mr. Wang admitted in a June 2013 interview that he took  
16 the photos to assist Huawei’s testing robot development team. ¶ 71.

17 In the wake of Mr. Wang’s unauthorized actions, T-Mobile ratcheted up security  
18 restrictions on Huawei. It barred all Huawei personnel except Mr. Xiong from the clean  
19 room. ¶ 51. It required that he be escorted to the room, and that his activities in the room  
20 be recorded on video. ¶ 51.

21 In late May 2013, T-Mobile gave Mr. Xiong four end effectors in the clean room  
22 for testing. ¶ 54. He hid one of them from the view of the security camera, then placed it  
23 in his laptop bag and took it out of the clean room. ¶ 55. T-Mobile quickly discovered  
24 that it was missing, then confronted Mr. Xiong, who denied intentionally taking it. ¶ 56.  
25 Mr. Xiong took the stolen end effector to Huawei USA’s local offices, took  
26 measurements and conducted other analyses, and sent the results to Huawei’s research  
27 and development team in China. ¶¶ 57-59. Mr. Xiong admitted in a June 2013 interview

1 that both Mr. Wang's photographs and his analyses of the end effector were appropriated  
2 to assist in Huawei's development of a testing robot. ¶¶ 69-70. He admitted that he had  
3 been inquiring with third parties about developing a testing robot since early 2013. ¶ 66.  
4 A Huawei USA executive vice president admitted that Mr. Wang and Mr. Xiong acted to  
5 assist Huawei with developing a testing robot. ¶ 68.

6 In addition to Mr. Wang's photographs and Mr. Xiong's theft of the end effector,  
7 T-Mobile alleges that unnamed Huawei representatives stole "sequence files," software  
8 files used to guide Tappy's testing procedures. ¶¶ 61-62.

9 Huawei used the fruits of its theft to build a testing robot. ¶ 16. It now uses that  
10 robot to test its own handsets. ¶ 19.

11 Because of Huawei's conduct, T-Mobile terminated its supplier relationship. The  
12 cost of that termination, along with the cost of investigating Huawei's theft, is millions of  
13 dollars. ¶ 20.

14 From these allegations, T-Mobile attempts to state four causes of action. It  
15 contends that both Huawei USA and Huawei China are liable for misappropriation of  
16 trade secrets in violation of Washington's version of the Uniform Trade Secrets Act  
17 ("UTSA," RCW Ch. 19.108), for breach of contracts protecting T-Mobile's confidential  
18 information (including the 2010 supply agreement, the 2012 non-disclosure agreement,  
19 and the Clean Room Letter), and for violation of the Washington Consumer Protection  
20 Act ("CPA," RCW Ch. 19.86). T-Mobile contends that Huawei China alone is liable for  
21 interfering with T-Mobile's contractual relationships and business expectancies.

22 Huawei USA has invoked Federal Rule of Civil Procedure 12(b)(6), moving to  
23 dismiss the three causes of action against it for failure to state a claim. Huawei China  
24 filed its own motion joining its subsidiary's motion, but also requesting that the court  
25 dismiss the tortious interference claim for failure to state a claim. In addition, Huawei  
26 China invoked Federal Rule of Civil Procedure 12(b)(2), asking the court to dismiss all  
27 claims against it for lack of personal jurisdiction.

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1 The court now considers both motions to dismiss.

2                   **III. ANALYSIS OF RULE 12(b)(6) MOTIONS**

3 Both Huawei Defendants invoke Fed. R. Civ. P. 12(b)(6), which permits a court to  
4 dismiss a complaint for failure to state a claim. The rule requires the court to assume the  
5 truth of the complaint's factual allegations and credit all reasonable inferences arising  
6 from those allegations. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007). The  
7 plaintiff must point to factual allegations that "state a claim to relief that is plausible on  
8 its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). If the plaintiff succeeds,  
9 the complaint avoids dismissal if there is "any set of facts consistent with the allegations  
10 in the complaint" that would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*,  
11 556 U.S. 662, 679 (2009) ("When there are well-pleaded factual allegations, a court  
12 should assume their veracity and then determine whether they plausibly give rise to an  
13 entitlement to relief."). The court typically cannot consider evidence beyond the four  
14 corners of the complaint, although it may rely on a document to which the complaint  
15 refers if the document is central to the party's claims and its authenticity is not in  
16 question. *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). The court may also  
17 consider evidence subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908  
18 (9th Cir. 2003).

19                  **A. T-Mobile Has Adequately Pleaded a Trade Secret Claim.**

20 A trade secret is "information, including a formula, pattern, compilation, program,  
21 device, method, technique, or process" that "[d]erives independent economic value,  
22 actual or potential, from not being generally known to, and not being readily  
23 ascertainable by proper means by, other persons who can obtain economic value from its  
24 disclosure or use" and is "the subject of efforts that are reasonable under the  
25 circumstances to maintain its secrecy." RCW 19.108.010. Huawei contends that it has  
26 not misappropriated any T-Mobile trade secret because T-Mobile has not adequately  
27 pleaded that anything about Tappy is a trade secret.

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1       **1.       T-Mobile Has Adequately Pleaded the Existence of Trade Secrets.**

2       The standard that applies to a Rule 12(b)(6) motion is fatal to Defendants' attacks  
3       on T-Mobile's trade secret claim. Huawei prefers that the court ignore portions of T-  
4       Mobile's complaint and rely instead on facts not mentioned in that complaint. The  
5       centerpiece of their attack is a collection of United States and foreign patent applications  
6       in which T-Mobile allegedly publicly disclosed at least some of the technology  
7       incorporated in Tappy, along with a collection of disclosures in the media in which T-  
8       Mobile boasted of its testing lab and published (or allowed others to publish) video and  
9       photographs showing Tappy in action. All of those disclosures preceded Huawei's  
10      wrongdoing. There is no trade secret, Huawei contends, because T-Mobile had already  
11      publicly disclosed everything about Tappy before the acts of Mr. Wang and Mr. Xiong.

12      The court assumes, purely for purposes of this motion, that it could properly rely  
13      on this collection of public material in considering Huawei's motions to dismiss. Even  
14      so, that material does not suffice on a motion to dismiss to defeat T-Mobile's assertion of  
15      a trade secret. It is simple enough to conclude, based on this host of disclosures, that T-  
16      Mobile publicly disclosed much about Tappy. It is another matter entirely to conclude,  
17      especially given the limitations of a motion to dismiss for failure to state a claim, that T-  
18      Mobile disclosed *everything* about Tappy, including trade secret information. Huawei's  
19      arguments to the contrary are unconvincing.

20      The most obvious flaw in Huawei's arguments is that T-Mobile has alleged that its  
21      representatives stole information about Tappy. The court must credit those allegations as  
22      true. Absent from either of the motions to dismiss is an explanation of why Mr. Xiong,  
23      Mr. Wang, and other Huawei representatives would have taken those actions if  
24      everything they wanted to know about Tappy had already been publicly disclosed. T-  
25      Mobile has alleged specific acts by which Huawei representatives attempted to furtively  
26      appropriate information about Tappy. Because it is unusual to steal what one can freely  
27      obtain in the public domain, it is plausible to infer that Huawei was stealing trade secret

1 information. There may be other plausible inferences, but that makes no difference on a  
2 motion to dismiss.

3 Take, for example, Huawei's assertion, based on the presence of an "Epson" logo  
4 on one of Tappy's components as demonstrated in one of the videos, that Epson, not T-  
5 Mobile, developed Tappy. That assertion fails at the threshold, because the court must  
6 credit the plausible inference that Epson provided only a component of the robot, and that  
7 T-Mobile made modifications or additions of its own. But even if that were not the case,  
8 if Epson built Tappy, why did Huawei not simply purchase its own Tappy from Epson, as  
9 opposed to having Mr. Wang and Mr. Xiong take surreptitious photographs and steal an  
10 end effector for analysis? A plausible answer is that Epson could not give Huawei  
11 everything it needed to build a testing robot that suited Huawei's needs.

12 The same is true of the collection of patent applications to which Huawei points.  
13 At the threshold, the court is in no position on a motion to dismiss to sift through patent  
14 applications and discern whether they fully disclose everything about Tappy. That is true  
15 for many reasons. Patent applications disclose only implementations of an invention as  
16 of the date of the application, including the "best mode" of implementing the application  
17 known to the inventor at the time. It is plausible, based on the allegations of T-Mobile's  
18 complaint, to infer that it continued to refine its patented technology such that Tappy  
19 incorporated trade secret refinements nowhere disclosed in patent applications. But even  
20 if those patent applications disclosed every aspect of Tappy, the court could not reach  
21 that conclusion on its own based solely on a sheaf of patent applications and the  
22 allegations of T-Mobile's complaint. It would need to compare the disclosures of the  
23 patent applications to the features of Tappy, something that likely requires expert  
24 testimony, but is in any event manifestly beyond the scope of a motion to dismiss for  
25 failure to state a claim. Huawei asks the court to look at a few diagrams disclosed in the  
26 patent applications, note that they appear to resemble Tappy, and conclude that nothing  
27 about Tappy is a trade secret. Even if the court could do that, it could not ignore that T-

1 Mobile has alleged facts that make it plausible to infer that Mr. Wang and Mr. Xiong  
2 misappropriated information that was not disclosed in any patent application or any other  
3 public source. Why, for example, did Mr. Xiong steal an end effector and analyze it if he  
4 could have obtained the same information by looking at patent applications? A plausible  
5 answer is that he could not, because the information he was taking was T-Mobile's trade  
6 secret.

7 The same concerns apply to the videos and photographs on which Huawei asks the  
8 court to rely. They plainly disclose some aspects of Tappy. But if they disclosed every  
9 aspect, why did Mr. Wang take surreptitious photographs? Why behave furtively if he  
10 could obtain the same information by simply downloading videos? Huawei-USA  
11 attaches to its motion to dismiss four photographs that it contends are the ones Mr. Wang  
12 took. Even assuming that the court could accept that assertion on a motion to dismiss,  
13 there are obvious differences between the photographs and the videos to which Huawei  
14 points. The court cannot, on a motion to dismiss, accept Huawei's bald assertion that the  
15 photos that Mr. Wang took without permission are no more illuminating than the videos.  
16 A plausible inference is that Mr. Wang took the photos to obtain information he could not  
17 obtain in any public photos or videos of Tappy.

18 **2. T-Mobile Has Adequately Identified its Trade Secrets.**

19 Apart from its argument that there is nothing secret about Tappy, Huawei contends  
20 that T-Mobile has failed to identify its purported trade secrets with sufficient  
21 particularity. This argument plays on a tension often present in trade secret litigation. A  
22 plaintiff looking to take unfair advantage of the UTSA might plead trade secret  
23 misappropriation without doing anything to identify what its trade secrets are. If allowed  
24 to proceed to discovery on such a flimsy basis, the plaintiff could not only burden the  
25 defendant with the task of responding to broad discovery requests, but could also identify  
26 its trade secrets after the fact by tailoring its identification of trade secrets to the  
27 discovery it receives. On the other hand, because it is the defendant who knows what it

1 misappropriated, a plaintiff should not be compelled to divulge with specificity all of its  
2 possible trade secrets (especially not to a defendant who it believes has already  
3 misappropriated at least one of them) in order to proceed to discovery.

4 T-Mobile has done enough to identify its trade secrets. T-Mobile has identified at  
5 least two aspects of Tappy that Huawei targeted with its misappropriation efforts:  
6 information about the end effector, and the “sequence files” that govern Tappy’s testing  
7 steps. As to the end effector, Huawei’s claims that it cannot be expected to know what is  
8 a trade secret are unconvincing. Mr. Xiong stole an end effector, analyzed it, and sent the  
9 results of that analysis to Huawei China. T-Mobile may not know exactly why, and there  
10 is no reason to force it to declare exactly which aspects of the end effector it believes are  
11 secret. Huawei will submit to discovery about what it learned about the end effector and  
12 why. As to the sequence files, T-Mobile’s allegations as to who took them and how are  
13 much more vague. Nonetheless, Huawei cannot credibly claim that a claim of  
14 unspecified trade secrets in the sequence files is unduly broad. The court finds nothing  
15 unreasonable about requiring Huawei to submit to discovery on that issue.

16 **3. T-Mobile Has Adequately Alleged Efforts to Keep Its Trade Secrets  
17 Confidential.**

18 Huawei asks the court to conclude that T-Mobile has not adequately alleged  
19 reasonable efforts to keep its trade secrets confidential. Huawei is not at all persuasive.  
20 T-Mobile described many security measures, including limits on access to its clean room,  
21 limits on who could enter it, efforts to monitor what occurred in the clean room, and  
22 efforts to immediately address Huawei’s theft of information from the clean room. That  
23 is more than enough to plausibly allege reasonable efforts to protect its trade secrets.  
24 Huawei points to other measures that T-Mobile could have taken, but that is immaterial  
25 on a motion to dismiss. Huawei’s contention that T-Mobile’s secrecy measures were  
26 inadequate is one that it will need to make in front of a jury, not in a motion to dismiss.

1           **B. T-Mobile Has Adequately Pleaded a Breach of Contract Claim Against Both  
Huawei USA and Huawei China.**

2           Huawei USA was a signatory to the 2010 supply agreement, the 2012 non-  
3 disclosure agreement, the 2012 Clean Room Letter, and a supply agreement with another  
4 mobile phone network provider whose contractual rights T-Mobile has now acquired. T-  
5 Mobile alleges that all of those agreements contain clauses protecting its confidential  
6 information, and that Huawei USA breached all of them. That is adequate to state a  
7 breach of contract claim, and Huawei USA has not convinced the court that it needs more  
8 specific allegations as to precisely which aspects of those contracts it breached.

9           Huawei USA also contends that the court should dismiss the breach of contract  
10 claim because it seeks damages that are duplicative of the damages T-Mobile seeks for  
11 misappropriation of its trade secrets. Even if the damages were wholly duplicative, that  
12 is no basis at all for dismissing the claim. Jury instructions will ensure that T-Mobile  
13 does not receive a duplicative damage award; there is no basis to preclude T-Mobile from  
14 showing that the same acts constituted both misappropriation of trade secrets and breach  
15 of contract.

16           T-Mobile's claim that Huawei China breached contracts introduces another  
17 complication: Huawei China did not sign any of the contracts T-Mobile describes in its  
18 complaint. Nonetheless, T-Mobile points out that the non-disclosure agreement contains  
19 a clause in which Huawei USA agreed that it was signing on behalf of Huawei China.  
20 Huawei China contends that agency principles dictate that its subsidiary could not bind it.  
21 That argument, like all of the arguments Huawei China raises to avoid the breach of  
22 contract claim, depends on facts well beyond the scope of T-Mobile's complaint.<sup>2</sup>  
23 Huawei China is welcome to present those facts at trial or in a motion where it is  
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25           <sup>2</sup> Huawei China asserts, for example, that its not actually Huawei USA's parent company, but  
26 rather the joint owner of another company that is the parent of another company that is itself  
27 Huawei USA's parent. Def.'s Reply (Dkt. # 59) at 1 n.1. The court cannot accept Huawei  
28 China's assertion on a motion to dismiss. It must instead accept T-Mobile's allegation that  
Huawei USA is Huawei China's wholly-owned subsidiary. ¶ 24.

1 permitted to present evidence outside the scope of the complaint. On a motion to  
2 dismiss, its arguments are not sufficient.

3 **C. T-Mobile Has Adequately Pleaded that Huawei China Interfered With Its  
4 Business Relationships.**

5 Perhaps recognizing that Huawei China is not bound to some or all of the contracts  
6 to which Huawei USA bound itself, T-Mobile asserts that Huawei China is liable for  
7 tortiously interfering with those contracts or with business expectancies. A tortious  
8 interference claim is comprised of the following elements:

9 (1) the existence of a valid contractual relationship or business expectancy;  
10 (2) that defendants had knowledge of that relationship; (3) an intentional  
interference inducing or causing a breach or termination of the relationship  
or expectancy; (4) that defendants interfered for an improper purpose or  
used improper means; and (5) resultant damage.

12 *Leingang v. Pierce County Medical Bureau*, 930 P.2d 288, 300 (Wash. 1997).

13 Huawei China offers four arguments in an effort to win dismissal of T-Mobile's  
14 tortious interference claim. The first is that the interference claim depends on T-Mobile's  
15 claim of trade secret misappropriation, and fails for the same reasons. Because the court  
16 has already concluded that T-Mobile has adequately pleaded trade secret  
17 misappropriation, it need not consider this argument further. The second is that T-  
18 Mobile's allegation that it interfered with "other applicable agreements" (¶ 99) is  
19 insufficiently particularized. That is unconvincing, because the same allegation states  
20 that Huawei China interfered with the 2012 supply agreement and the Clean Room  
21 Letter. ¶ 99. Even if the reference to "other applicable agreements" were too vague, that  
22 would not undermine a claim as to the 2012 supply agreement and the Clean Room  
23 Letter. T-Mobile's allegations suffice to inform Huawei China that it is being sued for  
24 interfering with any agreement that imposes confidentiality obligations on Huawei USA.  
That suffices. Huawei China's third argument is that the UTSA preempts T-Mobile's  
25 tortious interference claim. The court will address that argument in Part III.E, *infra*.  
26

1       What remains is Huawei China’s contention that it cannot, as a matter of law, be  
2 liable for interfering with the contractual relationships of its subsidiary. That argument  
3 relies entirely on *Hansen v. Transworld Wireless TV-Spokane, Inc.*, 44 P.3d 929 (Wash.  
4 Ct. App. 2002). In *Hansen*, the court considered a tortious interference claim in the wake  
5 of the breach of a contract to buy the assets of a local wireless cable television company.  
6 44 P.3d at 932. The local company was the wholly-owned subsidiary of its parent  
7 company, the parent company was the two-thirds-owned subsidiary of another company,  
8 and that company was in turn the wholly-owned subsidiary of a Canadian corporation.  
9 *Id.* After the plaintiff believed he had reached a contract to purchase the local company’s  
10 assets, its parent’s board made an about face and instead sold the local company to  
11 another purchaser. *Id.* at 932-33. The plaintiff sued the local company for breach of  
12 contract, and all of its parent, grandparent, and great-grandparent companies for tortious  
13 interference. *Id.* at 933. Adopting non-Washington authority establishing that “a  
14 corporate parent is not always liable in tort for interfering with the affairs of a  
15 subsidiary,” *id.* at 935-36, the *Hansen* court held that the trial court did not err in granting  
16 summary judgment against the tortious interference claim. *Id.* at 933, 936. It explained  
17 that there was no factual dispute that the “financial interests of [the parent companies and  
18 the local company] were identical,” and thus held that the parent companies were  
19 permitted to interfere with the local company’s contractual relationships. *Id.* at 936.

20       At this stage, the court expresses no view on whether Huawei China, like the  
21 parent companies in *Hansen*, was privileged to interfere with the contracts between  
22 Huawei USA and T-Mobile. The *Hansen* court did not purport to define the boundaries  
23 of the privilege it extended to the parent companies before it. So far as the court is aware,  
24 only one court in Washington has even considered applying *Hansen*’s holding. In  
25 *NTCH-WA, Inc. v. ZTE Corp.*, No. 12-CV-3110-TOR, 2014 U.S. Dist. LEXIS 26287, at  
26 \*23 (E.D. Wash. Feb. 27, 2014), the court declined to apply *Hansen* on a motion to  
27 dismiss, noting that whether the parent-subsidiary “economic interests were aligned is a  
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1 question of fact which is not susceptible to resolution on a motion to dismiss.” In this  
2 case, it is plausible that whereas Huawei USA highly valued its economic interest in  
3 maintaining its supplier relationship with T-Mobile, Huawei China saw that interest as  
4 less valuable than building a testing robot that it could use for all of the handsets that its  
5 subsidiaries supplied to all purchasers, not only to T-Mobile. Without evidence to flesh  
6 out the alignment of interests between the Huawei entities, the court declines to decide  
7 the applicability of *Hansen*.

8 **D. T-Mobile Has Not Pleading a CPA Claim.**

9 A CPA claim requires a plaintiff to prove “(1) [an] unfair or deceptive act or  
10 practice; (2) occurring in trade or commerce; (3) public interest impact, (4) [an] injury to  
11 plaintiff in his or her business or property, [and] (5) causation.” *Hangman Ridge*  
12 *Training Stables, Inc. v. Safeco Title Ins.*, 719 P.2d 531, 523 (Wash. 1986). Both Huawei  
13 entities contend that T-Mobile has failed to plead an unfair or deceptive act, that it has  
14 failed to allege a public interest impact, and that the UTSA preempts its CPA claim.

15 The court quickly dispenses with Huawei’s first argument. It contends that the  
16 only “unfair or deceptive act” T-Mobile has alleged is the misappropriation of its trade  
17 secret, and that this allegation fails for the same reasons that T-Mobile fails to allege  
18 misappropriation. The court has already concluded that T-Mobile has pleaded a claim for  
19 trade secret misappropriation.

20 As to whether T-Mobile has pleaded a public interest impact, the court returns to  
21 *Hangman Ridge*, where the Washington Supreme Court declared that “it is the likelihood  
22 that additional plaintiffs have been or will be injured in exactly the same fashion that  
23 changes a factual pattern from a private dispute to one that affects the public interest.”  
24 719 P.2d at 538. T-Mobile attempts to plead a public interest impact by pointing to  
25 Huawei’s “pattern of disregard for the intellectual property rights of other entities and  
26 companies in the United States.” ¶ 21. That quote, according to T-Mobile, is lifted from  
27 the United States “House of Representatives Permanent Select Committee on  
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1     Intelligence,” which allegedly investigated Huawei in November 2011. ¶ 76. Although  
 2     T-Mobile alleges that Huawei has a “documented history of violating security and  
 3     confidentiality protocols in order to steal technology or obtain other competitive  
 4     advantages,” ¶ 74, the only other specific allegation is that an expert concluded that  
 5     Huawei misappropriated unspecified “source code” from “Cisco” in 2003, then denied  
 6     wrongdoing in 2012. ¶¶ 77-78. The court can draw no inference about what Huawei did  
 7     to misappropriate Cisco’s source code or to earn the disapproval of a committee of the  
 8     House of Representatives. It therefore cannot reach a plausible inference that Huawei has  
 9     already injured or is likely to injure additional plaintiffs in “exactly the same fashion” as  
 10    it allegedly injured T-Mobile.

11           T-Mobile fares no better after consideration of factors that courts have used to  
 12    guide their inquiry into a public interest impact sufficient for a CPA claim. In cases not  
 13    involving a consumer transaction, those factors are as follows:

14           (1) Were the alleged acts committed in the course of defendant’s business?  
 15           (2) Did defendant advertise to the public in general? (3) Did defendant  
 16    actively solicit this particular plaintiff, indicating potential solicitation of  
 17    others? (4) Did plaintiff and defendant occupy unequal bargaining  
 18    positions?

19           *Stephens v. Omni Ins. Co.*, 159 P.3d 10, 24 (Wash. Ct. App. 2007) (noting that “[n]o one  
 20    factor is dispositive, nor it necessary that all be present”). T-Mobile’s complaint offers  
 21    formulaic recitations of the first three of those factors, ¶ 109, but those labels do not give  
 22    rise to a plausible inference of public interest impact. Although Huawei committed its  
 23    allegedly wrongful acts in the course of its business, the remaining factors square poorly  
 24    with T-Mobile’s allegations. Huawei’s misconduct is not the result of the supplier  
 25    relationship that it arguably solicited (and may solicit from other businesses), but rather  
 26    the result of its desire to acquire a specific technology that it discovered in the course of  
 27    that relationship. That relationship, moreover, was one between two presumably well-  
 28    heeled corporations, not one in which bargaining power was unequal. The dispute that T-  
     Mobile has pleaded is, the court concludes, a private one.

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1       As an alternative to demonstrating (or pleading) an impact on the public interest, a  
2 CPA plaintiff can establish a per se public interest impact by “showing that a statute has  
3 been violated which contains a specific legislative declaration of public interest impact.”  
4 *Hangman Ridge*, 719 P.2d at 538.<sup>3</sup> T-Mobile attempts to satisfy this alternative  
5 requirement by pointing to RCW 4.24.601. That statute is not part of the UTSA, but  
6 rather part of an act relating to public access to information about product liability and  
7 hazardous substances claims. RCW 4.24.601, 4.24.611. The legislature declared, in that  
8 context, that “the protection of trade secrets, other confidential research, development, or  
9 commercial information concerning products or business methods promotes business  
10 activity and prevents unfair competition.” RCW 4.24.601. It thus declared that it was a  
11 “matter of public policy that the confidentiality of such information be protected and its  
12 unnecessary disclosure be protected.” *Id.* That contrasts poorly with other statutes with  
13 legislative declarations that establish a per se public interest impact. *E.g.*, RCW  
14 19.182.150 (declaring, as to Washington Fair Credit Reporting Act, that “the practices  
15 covered by this chapter are matters vitally affecting the public interest for the purpose of  
16 applying the consumer protection act”), RCW 46.70.310 (declaring, as to the Auto  
17 Dealers Practice Act, that “[a]ny violation of this chapter is deemed to affect the public  
18 interest”), RCW 48.01.030 (declaring that “[t]he business of insurance is one affected by  
19 the public interest”). The UTSA itself contains no declaration of public interest impact.  
20 The court concludes that RCW 4.24.601 does not contain a declaration of public interest  
21 impact sufficient to make misappropriation of a trade secret an act with a per se public  
22 interest impact.

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<sup>3</sup> A plaintiff may also establish public interest by showing a violation of a “statute that incorporates [the CPA].” RCW 19.86.093(1). T-Mobile does not allege that Huawei violated a statute that incorporates the CPA.

1           **E. The UTSA Preempts the Tortious Interference Claim that T-Mobile Pleaded  
2           Against Huawei China.**

3           The UTSA declares that it “displaces conflicting tort, restitutionary, and other law  
4           of this state pertaining to civil liability for misappropriation of a trade secret.”  
5           RCW 19.108.900. It does not preempt “[c]ontractual or other civil liability or relief that  
6           is not based upon misappropriation of a trade secret . . .” RCW 19.108.900(2)(a).

7           As the court previously noted, Huawei China argues that the UTSA preempts T-  
8           Mobile’s tortious interference claim. Both Huawei entities argue that the UTSA  
9           preempts T-Mobile’s CPA claim, an argument that the court will not consider in light of  
10          its dismissal of the CPA claim.

11          The preemptive scope of the UTSA has received little attention in Washington’s  
12          state courts. The Washington Supreme Court has cited RCW 19.108.900 just twice.  
13          *Boeing v. Sierracin Corp.*, 738 P.2d 665, 673 (Wash. 1987); *Ed Nowogroski Ins., Inc. v.*  
14          *Rucker*, 971 P.2d 936, 945 & n.5 (Wash. 1999). The most comprehensive analysis of the  
15          scope of that statute by a state court comes in *Thola v. Henschell*, 164 P.3d 524 (Wash.  
16          Ct. App. 2007).

17          *Thola* considered an appeal from a jury trial in a dispute between two owners of  
18          chiropractic clinics after a chiropractor left plaintiff’s clinic and began working at  
19          defendant’s clinic. 164 P.3d at 527. The jury found the chiropractor liable for violating  
20          the UTSA by misappropriating a “confidential client list” and found the owner of clinic  
21          to which she moved vicariously liable for that violation and for tortiously interfering with  
22          her previous employer’s business relationships. *Id.* Considering whether the UTSA  
23          preempted the tortious interference claim, the *Thola* court adopted what this court will  
24          call a “strong” view of the preemptive scope of the UTSA. It ruled that a plaintiff “may  
25          not rely on acts that constitute trade secret misappropriation to support other causes of  
26          action.” *Id.* at 530 (quoting *Ed Nowogroski Ins., Inc. v. Rucker*, 944 P.2d 1093, 1097

1 (Wash. Ct. App. 1997).<sup>4</sup> It offered a three-step analysis to determine whether a claim is  
 2 preempted:

3       (1) assess the facts that support the plaintiff's [non-UTSA] civil claim, (2)  
 4       ask whether those facts are the same as those that support the plaintiff's  
 5       UTSA claim, and (3) hold that the UTSA preempts liability on the civil claim  
 6       unless the common law claim is factually independent from the UTSA claim.

7       *Thola*, 164 P.3d at 530. Applying that analysis, the court concluded that the plaintiff's  
 8       tortious interference claim was not preempted because it was based, at least in part, on  
 9       evidence that the chiropractor had used appointments with patients at the plaintiff's clinic  
 10      to solicit those patients to take their business to the defendant's clinic. *Id.* Because the  
 11      solicitation did not involve the misappropriation of trade secrets, the UTSA did not  
 12      preempt the tortious interference claim *to the extent it relied on that act*. The court  
 13      ordered a retrial, however, because the jury was not instructed on preemption:

14       [T]he trial court should have instructed the jury that it could not consider  
 15       evidence of [the chiropractor]'s acts of trade secret misappropriation when  
 16       it deliberated on [plaintiff]'s common law actions.

17       The trial court's failure to instruct the jury that the law prohibits using the  
 18       trade secret violation evidence to prove [plaintiff]'s other claims prejudiced  
 19       [defendant]. Because the court did not instruct on the limits of this  
 20       evidence, it is highly likely that the jury did as [plaintiff] urged and used  
 21       the trade secret violation evidence to find for [plaintiff] on her other claims.  
 22       Upon retrial, the trial court must properly instruct the jury on preemption  
 23       and the limited use of trade secret misappropriation evidence.

24       *Id.* at 531 (internal citation omitted).

25       But even as the *Thola* court took a strong view of the preemptive scope of the  
 26       UTSA in Washington, it acknowledged a weaker view:

27       In some jurisdictions, a common law claim is not preempted if the elements  
 28       require some allegation or factual showing beyond those required under the  
 29       UTSA. *Mortgage Specialists[, Inc. v. Davey]*, 153 N.H. [764,] 778 [(N.H.  
 30       2006)]. But we do not adopt this view of the UTSA at this time because  
 31       our court did not adopt this reasoning in *Rucker I*, addressing only factual  
 32       preemption, and neither [plaintiff] nor [defendant] briefs this issue.

33       164 P.3d at 530 n.4.

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34       <sup>4</sup> The Washington Supreme Court affirmed the lower appellate court in *Nowogroski*, but the  
 35       lower court's preemption ruling was not at issue on appeal. *Nowogroski*, 971 P.2d at 941.

1       The distinction between the weak and strong views of the preemptive scope of the  
2 UTSA matters in this case because T-Mobile's tortious interference claim would survive  
3 under the former but not under the latter. T-Mobile has not articulated a set of facts it  
4 could rely on to prove its tortious interference claim that is wholly independent of those it  
5 will rely on to prove trade secret misappropriation. So far as its complaint reveals, it will  
6 prove Huawei China's tortious interference by proving that Huawei China induced  
7 Huawei USA to breach its contractual obligations by stealing trade secrets. On the other  
8 hand, there is no question that T-Mobile's tortious interference claim requires proof of  
9 elements that "require some allegation or factual showing beyond those required under  
10 the UTSA." *Thola*, 164 P.3d at 530 n.4. At a minimum, the tortious interference claim  
11 requires T-Mobile to prove the existence of a contractual relationship or business  
12 expectancy, which is not an element of a trade secret claim.

13       So far as the court is aware, only one court applying Washington law has taken the  
14 weaker view of the preemptive scope of the UTSA that the *Thola* court acknowledged.  
15 *LaFrance Corp. v. Werttemberger*, No. C07-1932Z, 2008 U.S. Dist. LEXIS 98741, at \*6-  
16 8 (W.D. Wash. Nov. 24, 2008). Every other court to consider the issue has applied  
17 *Thola*'s stronger view. E.g., *Ultimate Timing, L.L.C. v. Simms*, 715 F. Supp. 2d 1195,  
18 1208 (W.D. Wash. 2010) (Pechman, J.); *Baden Sports, Inc. v. Wilson Sporting Goods*  
19 Co., No. C11-603MJP, 2011 U.S. Dist. LEXIS 81433, at \*6-7 (W.D. Wash. Jul. 26,  
20 2011), *Int'l Paper Co. v. Stuit*, No. C11-2139JLR, 2012 U.S. Dist. LEXIS 70583, at \*18-  
21 25 (W.D. Wash. May 21, 2012); *Enterprises Int'l, Inc. v. Int'l Knife & Saw, Inc.*, No.  
22 C12-5638BHS, 2013 U.S. Dist. LEXIS 168289, at \*23-29 (W.D. Wash. Nov. 26, 2013);  
23 *Fidelidad, Inc. v. Insitu, Inc.*, No. 13-CV-3128-TOR, 2014 U.S. Dist. LEXIS 151334, at  
24 \*7-11 (E.D. Wash. Oct. 24, 2014); *Kforce Inc. v. Oxenhandler*, No. C14-774MJP, 2015  
25 U.S. Dist. LEXIS 54101, at \*9-12 (W.D. Wash. Apr. 24, 2015); *Omega Morgan, Inc. v.*  
26 *Heely*, No. C14-556RSL, 2015 U.S. Dist. LEXIS 56288, at \*11-19 (W.D. Wash. Apr. 29,  
27 2015). In *Stuit*, the court noted that the decision in *LaFrance* relied on that court's view  
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1 that the weight of authority in jurisdictions using the UTSA supported the adoption of the  
 2 weaker view of that Act's preemptive scope.<sup>5</sup> *Stuit*, 2015 U.S. Dist. LEXIS 70583, at  
 3 \*24-25; *LaFrance*, 2008 U.S. Dist. LEXIS 98741, at \*7. The *Stuit* court, relying on more  
 4 recent UTSA decisions in other jurisdictions, concluded that the "weight of authority has  
 5 tipped away from the so-called 'elements' test adopted by the court in *LaFrance*." 2012  
 6 U.S. Dist. LEXIS 70583, at \*24.

7 This court applies the stronger form of preemption that the *Thola* court embraced,  
 8 because the court's best prediction is that the Washington Supreme Court would embrace  
 9 that view, and not the weaker form of preemption, if it were called upon to make a choice  
 10 between those views. As the court has already explained, there are no allegations in T-  
 11 Mobile's complaint that indicate that it can prove tortious interference without relying on  
 12 the same facts that support its trade secret claim. The court therefore dismisses the  
 13 tortious interference claim, although it will not prohibit T-Mobile from repleading it.<sup>6</sup>

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14       <sup>5</sup> Washington courts endeavor to construe this state's version of the UTSA "to achieve  
 15 uniformity among [the 46 other] jurisdictions that have enacted" some version of it. *Thola*, 164  
 P.3d at 528; RDW 19.108.910.

16       <sup>6</sup> T-Mobile relies on at least one case in which the court acknowledged that even when applying  
 17 the stronger view of the preemptive scope of the UTSA, it is not necessarily appropriate to  
 18 dismiss a non-trade-secret common-law claim that relies on the same core of facts as a trade  
 19 secret claim. In *Fidelidad*, the court declined to dismiss a tortious interference claim that  
 20 depended on the same facts as a trade secret claim, because it was possible that a finder of fact  
 21 would conclude that the misappropriated information was not in fact a trade secret. 2014 U.S.  
 22 Dist. LEXIS 151334, at \*9-11. In this case, it is not out of the question that a finder of fact could  
 23 conclude that whereas Huawei took confidential information protected by T-Mobile's contracts  
 24 with Huawei USA, that confidential information was not a trade secret. If so, T-Mobile might  
 25 prevail on a tortious interference claim without prevailing on its trade secret claim. Because T-  
 26 Mobile did not articulate this view, and the allegations of its complaint do not support it, the  
 27 court does not consider the issue further.

28       Should T-Mobile attempt to restate a tortious interference claim based on that theory, the  
 parties must consider that several courts applying Washington's UTSA have held that the Act  
 preempts even claims that rely on proof of misappropriation of confidential-but-not-trade-secret  
 information. So far as the court is aware, the *Stuit* court was the first to take that view. 2012  
 U.S. Dist. LEXIS 70583, at \*22 (noting that "the UTSA's preemption provision has generally  
 been interpreted to abolish all free-standing alternative causes of action for theft or misuse of  
 confidential, proprietary, or otherwise secret information *falling short of trade secret status*")  
 (quoting *CDC Restoration & Constr., LC v. Tradesmen Contractors, LLC*, 274 P.3d 317, 329  
 (Utah Ct. App. 2012)) (emphasis added). Other courts have, however, taken the same view.  
*E.g., Enterprises Int'l*, 2013 U.S. Dist. LEXIS 168289, at \*25-27; *Kforce*, 2015 U.S. Dist.  
 LEXIS 54101, at \*10-11.

1           **IV. ANALYSIS OF HUAWEI CHINA’S RULE 12(B)(2) MOTION**

2           When a defendant invokes Federal Rule of Civil Procedure 12(b)(2) in a motion to  
 3 dismiss for lack of personal jurisdiction, the plaintiff must make a *prima facie* showing of  
 4 personal jurisdiction. *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328  
 5 F.3d 1122, 1128-29 (9th Cir. 2003). A plaintiff builds a *prima facie* case by stating facts  
 6 that, if true, would support the court’s exercise of jurisdiction. *Id.* at 1129. The court  
 7 need not accept a plaintiff’s bare allegations if the defendant contests them with  
 8 evidence. *See AT&T Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir.  
 9 1996). If the parties provide competing evidence as to a fact, however, the court must  
 10 resolve competing inferences in the plaintiff’s favor. *Harris Rutsky*, 328 F.3d at 1129. If  
 11 appropriate, the court must grant a party’s request for an evidentiary hearing to determine  
 12 personal jurisdiction. *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284-85  
 13 (9th Cir. 1977). No one has requested an evidentiary hearing in this case.

14           **A. Personal Jurisdiction Basics**

15           In a case like this one, where no federal statute governs personal jurisdiction, the  
 16 court’s jurisdictional analysis starts with the “long-arm” statute of the state in which the  
 17 court sits. *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d  
 18 1114, 1123 (9th Cir. 2002). Washington’s long-arm statute (RCW 4.28.185) extends  
 19 personal jurisdiction to the broadest reach that the Due Process Clause of the federal  
 20 Constitution permits. *Shute v. Carnival Cruise Lines*, 783 P.2d 78, 82 (Wash. 1989).

21           There are two species of personal jurisdiction: specific and general. *Bancroft &*  
*Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). Both species  
 22 depend on the defendant’s contacts with the forum. “[S]pecific jurisdiction is tethered to  
 23 a relationship between the forum and the claim,” whereas general jurisdiction is not.  
*Holland Am. Line, Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 460 (9th Cir. 2007). A  
 24 defendant with “substantial” or “continuous and systematic” contacts with the forum state  
 25 is subject to general jurisdiction, and can be haled into court on any action, even one  
 26

1 unrelated to its contacts in the state. *Bancroft & Masters*, 223 F.3d at 1086. A defendant  
2 not subject to general jurisdiction may be subject to specific jurisdiction if the suit against  
3 it arises from its contacts with the forum state. *Id.* T-Mobile does not assert that Huawei  
4 China is subject to general jurisdiction in Washington; the court therefore considers only  
5 whether Huawei China is subject to specific jurisdiction.

6 **B. Evidence Relevant to Personal Jurisdiction Over Huawei China**

7 As the court has noted, Huawei China’s invocation of Rule 12(b)(2), unlike its  
8 invocation of Rule 12(b)(6), permits it to go beyond the allegations of T-Mobile’s  
9 complaint to introduce evidence relevant to the court’s jurisdictional analysis. Huawei  
10 took advantage of that opportunity to submit a single declaration from a representative  
11 who declares that Huawei China has no physical presence in Washington and has not  
12 transacted business here. Xu Decl. (Dkt. # 55) ¶¶ 5-11. She also asserts that none of the  
13 Huawei employees identified in T-Mobile’s complaint, including Mr. Wang and Mr.  
14 Xiong, were employed by Huawei China at any relevant time. *Id.* ¶¶ 11-13. The latter  
15 evidence, however, is contradicted by Huawei’s admission that the decision to discipline  
16 Mr. Wang and Mr. Xiong was made in part by Huawei China executives. Stipulation  
17 (Dkt. # 60-1) ¶ 2. The same stipulation admits that Huawei China took “corrective and  
18 disciplinary actions” against the people who supervised Mr. Wang and Mr. Xiong,  
19 including demoting personnel at both Huawei USA and Huawei China. *Id.* ¶ 5. From  
20 these admissions, the court can take the reasonable inference that Huawei China  
21 exercised control over the Huawei personnel who actually committed misconduct in T-  
22 Mobile’s Bellevue facilities. Other inferences are possible, but the court is required at  
23 this stage to take only the inferences that favor T-Mobile.

24 What is missing from Huawei China’s evidence is anything to contradict T-  
25 Mobile’s allegation that it “directed both its own employees and Huawei USA employees  
26 to steal . . . information from T-Mobile.” ¶ 17. The closest Huawei China comes to  
27 contradicting that evidence is a generic assertion that it “did not engage in any activities  
28

1 in the State of Washington as alleged in the complaint.” Xu Decl. (Dkt. # 55) ¶ 14.<sup>7</sup> But  
 2 T-Mobile’s claims do not depend on the allegation that Huawei China took actions in  
 3 Washington, they depend on the allegation that Huawei China directed from afar the  
 4 Bellevue misconduct of Mr. Xiong, Mr. Wang, and others. That uncontradicted  
 5 allegation, as the court will now discuss, is a sufficient basis for the court’s exercise of  
 6 personal jurisdiction over Huawei China.

7 **C. T-Mobile Passes The Three-Part Test for the Court’s Exercise of Specific  
 8 Jurisdiction Over Huawei China.**

9 A three-part test determines whether the assertion of specific jurisdiction over a  
 defendant comports with the Due Process Clause:

- 10       1)     The non-resident defendant must purposefully direct his activities or  
        11     consummate some transaction with the forum or [a] resident thereof;  
        12     or perform some act by which he purposefully avails himself of the  
        13     privilege of conducting activities in the forum, thereby invoking the  
        14     benefits and protections of its laws;
- 15       2)     the claim must be one which arises out of or relates to the  
        16     defendant’s forum-related activities; and
- 17       3)     the exercise of jurisdiction must comport with fair play and  
        18     substantial justice, i.e. it must be reasonable.

19     *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (quoting  
 20     *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987)). The plaintiff bears the burden as to  
 21     the first two parts of the test. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218,  
 22     1228 (9th Cir. 2011). If the plaintiff meets that burden, the burden shifts to the defendant  
 23     to make a “compelling case” that the exercise of jurisdiction is unreasonable. *Id.*  
 24     (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985)).

25     In the first part of the specific jurisdiction test, purposeful availment and  
 26     purposeful direction are “two distinct concepts.” *Schwarzenegger*, 374 F.3d at 802. In

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27     <sup>7</sup> Huawei China’s motion to dismiss contains a different assertion, that it was “not involved in  
 28     the actions set forth in the Complaint.” Def.’s Mot. (Dkt. # 54) at 6. No evidence supports that  
 assertion. Even if Huawei China had supported that assertion with evidence, however, the court  
 would permit T-Mobile at least limited discovery to test that assertion.

1 the Ninth Circuit, tort cases typically require a purposeful direction analysis, whereas  
 2 contract cases typically require a purposeful availment analysis. *Washington Shoe Co. v.*  
 3 *A-Z Sporting Goods, Inc.*, 704 F.3d 668, 672-73 (9th Cir. 2012). Much of Huawei  
 4 China's evidence tends to show that it did not purposefully avail itself of the privilege of  
 5 conducting activity in Washington. T-Mobile's allegations, however, are allegations of  
 6 tortious activity (*e.g.*, the misappropriation of trade secrets) *directed* at Washington.<sup>8</sup>  
 7 The court thus considers whether Huawei China purposefully directed conduct at  
 8 Washington. That requires consideration of the "effects" test for purposeful direction  
 9 from *Calder v. Jones*, 465 U.S. 783 (1984). *Washington Shoe Co. v. A-Z Sporting*  
 10 *Goods, Inc.*, 704 F.3d 668, 673-79 (9th Cir. 2012). That test is as follows:

11       The defendant allegedly [must] have (1) committed an intentional act, (2)  
 12 expressly aimed at the forum state, (3) causing harm that the defendant  
       knows is likely to be suffered in the forum state.

13 *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199, 1206 (9th Cir. 2006)  
 14 (quoting *Schwarzenegger*, 374 F.3d at 803). Where a plaintiff passes the effects test, a  
 15 court "may exercise personal jurisdiction over a defendant who engages in an intentional  
 16 act that causes harm in the forum state, even if that act takes place outside of the forum  
 17 state." *Washington Shoe*, 704 F.3d at 673.

18       T-Mobile's allegations satisfy the effects test as to Huawei China. T-Mobile has  
 19 adequately alleged that Huawei China acted intentionally. Its allegations plausibly state  
 20 that Huawei China intended to misappropriate its technology so that it could build its own  
 21 testing robot. To accomplish that plan, T-Mobile asserts Huawei China directed others  
 22 (like Mr. Wang and Mr. Xiong) to misappropriate information from T-Mobile's Bellevue  
 23 testing facility. That is activity expressly aimed at Washington. To the extent that  
 24 Huawei China believes that its evidence that it disciplined Mr. Xiong, Mr. Wang and

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25       <sup>8</sup> T-Mobile has no obligation to show that Huawei China is subject to personal jurisdiction as to  
 26 each of its claims. The court has "pendent personal jurisdiction" over all claims related to a  
 27 claim that gives rise to personal jurisdiction. *Action Embroidery Corp. v. Atl. Embroidery, Inc.*,  
       368 F.3d 1174, 1180 (9th Cir. 2004). All of T-Mobile's claims are sufficiently related to its  
       trade secret claim.

1 others is sufficient to demonstrate that it did not direct their misconduct, it is mistaken.  
 2 One could plausibly infer that Huawei China disciplined them because they acted,  
 3 independently, in a wrongful manner. But one could also plausibly infer that Huawei  
 4 China disciplined them only to give the appearance that it had not directed their activities.  
 5 Again, the court is compelled at this stage to accept the inferences that favor T-Mobile.  
 6 As to the last element of the effects test, T-Mobile has adequately alleged that Huawei  
 7 China knew that the Washington activity it directed from China would harm T-Mobile in  
 8 Washington.

9 As to the second part of the personal jurisdiction analysis, there is no question that  
 10 the claims against Huawei China arise out of the activity that it directed at Washington.

11 That brings the court to the third part of the jurisdictional analysis, where it is  
 12 Huawei China's burden to show that the exercise of personal jurisdiction over it would be  
 13 unreasonable. Huawei China did not attempt to discharge that burden. The court is  
 14 aware of no reason that its exercise of jurisdiction over Huawei China would be  
 15 unreasonable. *See Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1487-88 (9th Cir.  
 16 1993) (listing seven factors relevant to reasonableness of exercise of personal  
 17 jurisdiction); *see also Bancroft & Masters*, 223 F.3d at 1088 (noting that it is defendant's  
 18 burden to make a "compelling case" of unreasonableness).

## 19 V. CONCLUSION

20 For the reasons previously stated, the court GRANTS Huawei USA's motion to  
 21 dismiss (Dkt. # 32) in part and denies it in part, dismissing only T-Mobile's CPA claim.  
 22 The court GRANTS HUAWEI China's motion to dismiss (Dkt. # 54) in part and denies it  
 23 in part, dismissing only T-Mobile's tortious interference claim without prejudice.

24 DATED this 14th day of July, 2015.

25   
 26 \_\_\_\_\_  
 27

28 The Honorable Richard A. Jones  
 United States District Court Judge